

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 707 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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CHIMANLAL KHUSHALBHAI PATEL

Versus

STATE OF GUJARAT  
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Appearance:

MR JB PARDIWALA for Petitioner

Mr. H.L. Jani, A.P.P. for Respondent No. 1  
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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/11/2000

ORAL JUDGEMENT

1. The appellant-Chimanlal Khushalbhai Patel has filed the present appeal under Section 351(1) of the Code of Criminal Procedure, 1973 ( hereinafter referred to as Cr.P.C.) against the order passed by the learned Special Judge, Valsad dated 1-7-2000 below Exh.15.

2. That vide impugned order, the learned Special Judge, Valsad has found the appellant guilty for the contempt of Court under Section 345 of the Criminal Procedure Code and has sentenced him to pay the fine of Rs.200/-, in default, to suffer imprisonment for one month.

3. That the present appellant was a witness of prosecution in the matter of Special Case no.9/92 filed against one Damubhai Fakirbhai Pawar a Police Constable serving at Bilimora for the offences made punishable under Secs.7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

4. It may be noted that present appellant-Chimanlal Khushalbhai Patel was called as a Panchwitness by the PI ACB to lay a trap against the said Damubhai Fakirbhai Pawar. That the appellant has acted as a Panch during the said trap and when accused Damubhai Fakirbhai Pawar was tried for the said offences, the appellant was called as a witness by the prosecution and his oral evidence was being recorded on 1-7-2000. That during the examination-in-chief, the learned Public Prosecutor asked certain questions to the appellant who was in the witness box and at the initial stage, the appellant as a witness replied to the said questions. During the course of said oral evidence, the learned Special Judge felt that appellant as a witness was keeping silence to avoid reply to the questions put. That thereby, the learned Spl. Judge advised the appellant that he as a witness was free to depose according to his knowledge of facts and circumstances of the case; that he was not under any compulsion or obligation to depose in a particular manner. The appellant was, however, assured that as a witness, he should depose the true facts before the Court without being influenced by any other agency. That the learned Special Judge again felt that despite advise and assurance given to the appellant, the appellant as a witness was keeping constant silence as if he was ignoring the presence of the learned Public Prosecutor and the Court as well as the learned Advocate for the defence. That thereby, the learned Special Judge again advised the witness to reply the questions asked by the P.P. The learned Spl.Judge also felt that despite the advise and assurance given twice to the appellant as a witness, the appellant instead of replying the questions kept silence and wasted fifteen minutes time of the Court.

5. The learned Spl.Judge finding the above stated conduct of the appellant as a witness, recorded in the

order below Exh.15 that the appellant was adamant not to reply or to answer the questions put by the P.P., and thereby, a noting was made in the deposition of the appellant recorded vide Exh.14 and appellant was served with a notice under Section 345(1) of the Criminal Procedure Code to show cause why action should not be taken under Section 345(1) of the Code. It appears from the record that appellant replied to the said show cause notice on the very day as per copy produced at running page no.3, and thereafter, the deposition of the appellant was also recorded. However the Court held the appellant guilty for the contempt as provided under Section 345(1) of the Code and imposed punishment to pay fine of Rs.200/- at once failing which, it is ordered that the appellant shall suffer an imprisonment for one month vide impugned order. It is also ordered that a copy of the order be sent to the Collector for taking necessary disciplinary action. The appellant has challenged the said order in the present appeal.

6. Mr. J.D. Pardiwala, learned Advocate appearing for the appellant has taken me through the impugned order, show cause notice and reply filed by the appellant and has urged that in the facts and circumstances of the case, the trial Court has unnecessarily taken a serious view of a trivial matter and has imposed punishment which cannot be said to be commensurate with the alleged guilt of the appellant. It is submitted that appellant has been serving as a Junior Clerk with Jilla Panchayat and as per the service rules if the employee is punished to pay fine for more than Rs.50/-by any Court of law, then, he is liable to be removed from service. Mr. Pardiwala has urged that appellant has put in about 14 years of service and is having a family consisting of old mother, his wife and two minor children. If a reasonable view is not taken, then, appellant would lose his service, his retirement benefits. Not only appellant but his family members shall also suffer innumerable hardship for no fault on their part.

7. The perusal of the impugned order suggest that the Court has recorded deposition of the appellant after the said incident wherein the appellant has given proper reply to each question put by the prosecution as well as defence. It is also pertinent to note that in reply to show cause notice the appellant has tendered unconditional apology and has prayed for pardon. The appellant has explained that it was his first occasion to appear before the Court as a witness. That at the relevant time, he was suffering from high blood pressure and on account of circumstances beyond his control he was

confused, and thereby, he has remained silent. That he did not intend to cause any insult to the Court nor did he desire to favour anybody.

8. The trial Court appears to have disregarded the unconditional apology tendered by the appellant and has observed in the impugned order that the behaviour of the appellant was hostile and insulting which spoiled the time of the Court. On that consideration the Court has found the appellant guilty under Section 345(1) of the Code.

9. In overall consideration of the facts and circumstances of the case apparent from the material on record, it appears that the trial Court appears to have over reacted to a trifle situation and has become unnecessarily touchy about the silence of the witness when he was in the box. The trial Court appears to have lost sight of the fact that if after the incident the appellant has properly answered to all the questions and his deposition was recorded there is no room for reasonable inference that at the time of incident, the appellant intentionally behaved in a manner which amounted to a hostile or insulting attitude. It is difficult to comprehend why Court should not have taken a view that appellant who has for the first time come to the Court was dumbfounded in such a situation and on account of his health problems, he remained silent. In the absence of any other material to attribute any motive to the appellant for remaining silent, the trial Court appears to have taken a very harsh view, particularly, in the context of the fact that appellant who is having service of 14 years because of the punishment is not only likely to lose his service but also his retirement benefits which he has earned by putting in service of 14 years. In that context, the trial Court ought to have considered the likelihood of hardship to be suffered by the family members of the appellant by imposition of the punishment.

10. On the basis of the aforesaid discussion, I am of the opinion, that the approach of the trial Court and the finding given of guilt in respect to offences made punishable under Sec.345(1) of the Code, in the facts and circumstances of the present case, cannot be said to be just, proper or reasonable and this would be a fit case where the appellate Court should exercise the discretion in favour of the appellant conferred under Sec.351(1) of the Code.

11. In the result, the appeal is allowed. The

impugned order passed by the learned Spl. Judge, Valsad dated 1-7-2000 holding the appellant guilty for the offences under Section 345(1) of the Code and imposing punishment to pay fine of Rs.200/-, in default, to undergo sentence of imprisonment for one month are hereby quashed and set aside. Fine, if paid, be returned to the appellant. Order accordingly.

(A.K.Trivedi, J.)

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